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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Afghanistan

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Afghanistan prepared by Mr. Felix Ermacora, Special Rapporteur of the Commission on Human Rights, in accordance with Commission on Human Rights resolution 1994/84 of 9 March 1994, and Economic and Social Council decision 1994/268 of 25 July 1994.

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ANNEX

Interim report on the situation of human rights in Afghanistan prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Commission resolution 1994/84 and Economic and Social Council decision 1994/268

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I. INTRODUCTION

1. The Special Rapporteur was first appointed to examine the human rights situation in Afghanistan in 1984 by the Chairman of the Commission on Human Rights, who had been requested to do so by the Economic and Social Council in its resolution 1984/37 of 24 May 1984. Since then, his mandate has been renewed regularly by the Commission, in resolutions endorsed by the Economic and Social Council, in which the Special Rapporteur was requested to report to the Commission and to the General Assembly. So far, he has submitted 10 reports to the Commission (E/CN.4/1985/21, E/CN.4/1986/24, E/CN.4/1987/22, E/CN.4/1988/25, E/CN.4/1989/24, E/CN.4/1990/25, E/CN.4/1991/31, E/CN.4/1992/33, E/CN.4/1993/42 and E/CN.4/1994/53) and nine to the General Assembly (A/40/843, A/41/778, A/42/667 and Corr.1, A/43/742, A/44/669, A/45/664, A/46/606, A/47/656 and A/48/584).

2. At its fiftieth session, the Commission on Human Rights decided, by its resolution 1994/84 of 9 March 1994, to extend the mandate of the Special Rapporteur for one year, an extension which was confirmed by the Economic and Social Council in its decision 1994/268 of 25 July 1994.

3. At its forty-eighth session, after considering the report submitted to it by the Special Rapporteur, the General Assembly, by its resolution 48/152 of 20 December 1993, decided to keep under consideration during its forty-ninth session the situation of human rights in Afghanistan, in the light of additional elements provided by the Commission on Human Rights and the Economic and Social Council.

4. Subsequent to the renewal of his mandate by the Commission on Human Rights at its fiftieth session, and in accordance with past practice, the Special Rapporteur again visited the area in order to obtain the most broadly-based information possible. He visited Pakistan on 11, 12, 16 and 17 September 1994 and Afghanistan on 13, 14, 15 and 18 September 1994.

5. Accordingly, the Special Rapporteur has the honour to submit his interim report to the General Assembly which was finalized on 31 October 1994, in compliance with Commission on Human Rights resolution 1994/84 and Assembly resolution 48/152.

6. During his visit to Pakistan, following the established schedule, the Special Rapporteur was received by the Chief Commissioner for Afghan Refugees. While in Islamabad, he met with the head of the Harakat Islami political party, Mr. Asef Mohseni; with the representative of the National Islamic Front of Afghanistan (NIFA) political party, Mr. Hamid Gailani; and with the spokesman of the Hezbe Islami (Hekmatyar) political party, Mr. Mangal Hussein. In addition, the Special Rapporteur met in Islamabad with the Chargé d'affaires of the Afghan Embassy in Pakistan, Mr. M. Mukhtar, with whom he exchanged views on the current situation in the country. The Special Rapporteur also had talks with Mr. Sotirios Mousouris, the Personal Representative of the Secretary-General in Afghanistan and Pakistan and deputy head of the United Nations special mission to Afghanistan, as well as with other representatives of United Nations agencies and private individuals.

7. The Special Rapporteur also went to the North West Frontier Province, where he met in Peshawar with representatives of United Nations agencies, of organizations concerned with human rights and humanitarian affairs and with private individuals. While in Peshawar, he met with the representatives of the Afghan Information Centre, of the Writers' Union of Free Afghanistan (WUFA), of the Afghan Professors' Association, of the Council of National Unity and Understanding as well as with a number of Afghan women.

8. The Special Rapporteur visited four cities in Afghanistan. In Mazar-i-Sharif, Balkh Province, the Special Rapporteur met with the representatives of the judicial system, with the Head of Police and with the Head of the National Islamic Security Directorate. He also visited the Mazar-i-Sharif prison. In addition, the Special Rapporteur met with the representatives of the Mazar-i-Sharif Human Rights Committee and with representatives of United Nations agencies.

9. In Herat, Herat Province, the Special Rapporteur met with the Governor of Herat, Mr. Ismail Khan, and with the President of the Provincial Court, and visited the Herat Central Prison. In addition, he met with Afghan returnees from the Islamic Republic of Iran.

10. During his visit to Nangarhar Province, the Special Rapporteur visited the Sar Shahi camp for internally displaced persons near Jalalabad. In Jalalabad, he met with the Governor, Mr. Abdul Qadir, and other members of the Council of Nangarhar Province. The Special Rapporteur also met with the representatives of the judicial system and visited the Jalalabad Central Prison. In addition, he met with the representatives of the Sikh community of Jalalabad and visited a Sikh temple in that city. The Special Rapporteur also met with representatives of United Nations agencies.

11. In Kandahar Province, the Special Rapporteur met in Kandahar City with maulavi Naqibullah Akhondazada at his military headquarters. While in Kandahar, he also met with Commander Niaz Mohammad Lalai and briefly visited Kandahar City.

12. The Special Rapporteur wishes once again to express his sincere gratitude to the governmental authorities of Afghanistan and Pakistan and the provincial authorities in Mazar-i-Sharif, Herat, Jalalabad and Kandahar for the valuable assistance and full cooperation which they extended to him. In this respect, he once again wishes to express his deep appreciation to the Personal Representative of the Secretary-General in Afghanistan and Pakistan, the Office of the Secretary-General in Afghanistan and Pakistan (OSGAP) and the United Nations Office for the Coordination of Humanitarian Assistance to Afghanistan (UNOCHA) for their most efficient logistical and other assistance without which these visits would not have been possible. The Special Rapporteur also wishes to thank the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Refugees (UNHCR) for the kind assistance which they extended to him in the field.

13. For the purpose of drafting this tenth report to the General Assembly on the situation of human rights in Afghanistan in the most impartial and objective manner possible, in addition to gathering information during the visits to

Pakistan and Afghanistan, the Special Rapporteur followed the course of events throughout the period covered by the report, namely, from March to October 1994, and systematically evaluated written and oral information relevant to his mandate received from various individuals and organizations. He also consulted various reports prepared by United Nations bodies and specialized agencies, as well as those by non-governmental organizations which deal with the human rights and humanitarian aspects of the Afghan issue.

14. Section II of the present report provides an outline of the political developments in Afghanistan since the submission of the previous report. Section III describes the approach of the United Nations to the Afghan question. Sections IV and V consider, respectively, the situation of human rights in Afghanistan and the situation of refugees and displaced persons. Section VI contains the conclusions and recommendations which the Special Rapporteur has drawn from the analysis of the available information.

II. OUTLINE OF THE POLITICAL DEVELOPMENTS IN AFGHANISTAN SINCE THE SUBMISSION OF THE PREVIOUS REPORT (A/48/584)

15. In October 1993, a new round of peace talks among Afghan factions began under the leadership of Jalalludin Haqqani, the Minister of Justice. On 2 November 1993, he announced a cessation of hostilities which was to last one year. This announcement was made at a time when the forces of Prime Minister Gulbuddin Hekmatyar and those belonging to the former Minister of Defence, Ahmad Shah Massoud, were engaged in heavy fighting in the Tagab district of Parwan Province, 60 km north-east of Kabul.

16. Prime Minister Hekmatyar reiterated his readiness to resign provided that the President, Burhanuddin Rabbani, also stepped down in an acknowledgement of his failure to bring peace to the country. President Rabbani referred to the Shura-Ahl-e-Hal Wa Aqd (Council for the solving of problems and making of agreements), claiming that he had legally been elected by this body. He therefore claimed that only an elected body was entitled to authorize his removal from office (see A/48/584, para. 102).

17. This was the starting-point for a new series of confrontations between the forces of Hekmatyar and Rabbani throughout Afghanistan. The battles were concentrated in particular on Kabul, where the forces allied with Prime Minister Hekmatyar launched a major offensive on 1 January 1994 which included aerial bombardment as well as heavy rocketing and shelling. At the time of the finalization of the present report, it is estimated that at least 3,500 persons have been killed and tens of thousands wounded in Kabul since the beginning of the offensive. At least 250,000 persons are believed to be displaced within the city, while several hundred thousand have been displaced throughout the country. Although Pakistan closed its border with Afghanistan on 12 January 1994, with the exception of persons with valid visas and travel documents as well as of humanitarian cases, a certain number of refugees have crossed the border into that country. Several areas of Kabul have reportedly been almost completely destroyed and deserted.

18. On 4 January 1994, the Secretary-General of the United Nations issued a statement in which he appealed urgently to all groups engaged in the violence to cease hostilities immediately and resolve their problems peacefully. On 12 January 1994, the Secretary-General issued a second statement in which he deplored the continued fighting in Afghanistan and welcomed the support for a timely dispatch of the United Nations special mission in pursuance of General Assembly resolution 48/208 of 21 December 1993 with the mandate "to canvass a broad spectrum of the leaders of Afghanistan, soliciting their views on how the United Nations can best assist Afghanistan in facilitating national rapprochement and reconstruction". Ambassador Mahmoud Mestiri of Tunisia was appointed by the Secretary-General to head the special mission, which began its work on 27 March 1994 in Afghanistan where it met with broad popular support. The mission presented its first progress report in July 1994 (A/49/208-S/1994/766) and is currently proceeding with the third phase of its work.

19. The conclusions and recommendations contained in the special mission's progress report may have prompted the authorities of Herat province and its Governor to convene a Supreme Islamic Council in Herat from 20 to 25 July 1994. Present at this gathering were in particular members of the Jamiat Islami political party headed by President Rabbani, a number of commanders, elders, religious leaders and persons who had taken refuge outside Afghanistan, including those living in Europe and the United States, as well as a number of persons who are closely associated with the former King of Afghanistan. At the end of its deliberations, the Council adopted an 11-point resolution which is contained in the appendix to the present report.

20. One of the principal players on the Afghan political scene, Gulbuddin Hekmatyar, was not represented at the Herat gathering. It should be recalled that President Rabbani was to have left office by 28 June 1994, the date agreed upon in the Jalalabad Accord of April/May 1993 (see E/CN.4/1994/53, para. 11). The lack of compliance regarding this provision of the agreement resulted in renewed heavy fighting between the forces allied with Mr. Rabbani and the joint forces of Mr. Gulbuddin Hekmatyar and General Dostom. As a consequence, the latter were forced to withdraw to a distance of some 25 kilometres away from the centre of Kabul. President Rabbani's opponents retaliated with new shelling and rocketing of Kabul. Herat, Kandahar and the Salang highway were also the targets of attacks by the forces of General Dostom.

21. The personalities present at the Herat gathering were satisfied with its outcome. The meeting has been described as taking place at a venue where no fighting took place, as being convened by a party which is not involved in the conflict, with all segments of Afghan society being represented, including representatives of refugees living in Europe and the United States. The debates were described as positive and the participants are reported to have agreed on the need for peace. The issues of freedom and security are reported to have been at the centre of discussion and to have taken precedence over personal interests. The Shura (Council) decided that it was necessary to hold general elections, establish a genuine Loya Jirga (Grand National Assembly) and set up a transitional government. Some elements of the optimism voiced during the gathering appear to be justified. Two features of the meeting were emphasized: the Shura was organized by Afghans and was the first opportunity to show the

people of Afghanistan that the destiny of the country is not only in the hands of political parties. This was cited as the principal difference between the Council held in Herat and the Jalalabad meeting of April/May 1993. Nevertheless, Kabul remains the heart of the country. It was therefore decided that the Commission which should implement the decisions of the Herat gathering should be established in Kabul.

22. The opponents of President Rabbani described the Herat gathering as one-sided and consisting mostly of people belonging to or having been invited by the Jamiat Islami political party which he heads. They described the Council as being a mere continuation of the Shura-Ahl-e-Hal Wa Aqd, which had been boycotted by more than half of the Afghan political parties and was therefore unrepresentative of the will of the people.

23. In spite of heavy rocketing, a special election commission met on 25 August 1994 at the Intercontinental Hotel in Kabul with a view to convening a Grand National Assembly at the end of October 1994, after the envisaged expiry of the President's term of office on 22 October. At the time of the finalization of the present report, President Rabbani gave no indication that he would withdraw from office. However, the continuous fighting in Kabul and the further destruction of the city appear to be a prelude to the envisaged date of the President's leaving of office. The battles waged between forces other than those allied with Mr. Burhanuddin Rabbani and Mr. Gulbuddin Hekmatyar seem to have the characteristics of a war by proxy.

III. APPROACH OF THE UNITED NATIONS TO THE AFGHAN QUESTION

24. The United Nations is not silent or inactive with regard to the Afghan problem. On the one side, the problem is approached from the standpoint of humanitarian assistance while attempts are made on the other side to assist the Afghan people and their political leaders to find a political solution to the current internal conflict, which began when the Islamic Government came to power in April 1992. In addition, human rights problems, including those resulting from the present situation in Afghanistan, are dealt with by the Special Rapporteur of the Commission on Human Rights. Therefore, it cannot be said that the United Nations is inactive in the face of the situation currently prevailing in Afghanistan.

25. Since the first wave of refugees started to cross the Afghan border in the wake of the Soviet intervention in 1979 and the ensuing war of liberation from the occupying forces, the United Nations has provided assistance to both the refugees and the countries to which millions of Afghan refugees had fled, in particular to Pakistan and the Islamic Republic of Iran. This assistance has not come to an end. The United Nations continues to be mindful of the implementation of the Geneva Accords of 1988, in which the situation of the still very numerous Afghan refugees has been taken into account.

26. Since January 1993, information about the humanitarian assistance provided by the United Nations has been regularly documented and published in the bulletins issued by the United Nations Office for the Coordination of Humanitarian Assistance to Afghanistan (UNOCHA). The weekly updates show,

inter alia, the contributions of States, the humanitarian operations of the United Nations in the different provinces of Afghanistan as well as assistance to refugees and displaced persons. They also show the extent to which the United Nations has tried to mitigate the effects of the crisis in Afghanistan through the opening of roads as well as in the de-mining process which it is the only one to carry out in a systematic manner.

27. On 21 December 1993, the General Assembly adopted resolution 48/208 entitled "Emergency international assistance for peace, normalcy and reconstruction of war-stricken Afghanistan". In pursuance of this resolution, the Secretary-General appointed Ambassador Mahmoud Mestiri (Tunisia) to head the United Nations special mission to Afghanistan, which began its work on 27 March 1994. The mission, composed also of the Personal Representative of the Secretary-General in Afghanistan and Pakistan, Mr. Sotirios Mousouris, of officials from United Nations Headquarters and from the Office of the Secretary-General in Afghanistan and Pakistan (OSGAP), visited numerous localities in Afghanistan such as Jalalabad, Kabul, Mazar-i-Sharif, Shebergan, Herat, Bamyan, Kandahar and Khost, where it met with a number of Afghan leaders, personalities and groups. In Pakistan, it travelled to Peshawar and Quetta. In addition, the special mission travelled to the capitals of Saudi Arabia, the Islamic Republic of Iran, the Russian Federation, and, later on, Uzbekistan. In July 1994, Mr. Mestiri presented a progress report with conclusions and recommendations on his findings upon the completion of the special mission's first phase of work. The Special Rapporteur appointed by the Commission on Human Rights, who has been making visits to Afghanistan since 1987 and has established contacts with numerous personalities inside and outside Afghanistan and has regularly submitted reports about the situation of human rights in Afghanistan to the General Assembly and the Commission on Human Rights regrets that the special mission has made no attempt to contact him. The conclusions and recommendations contained in the report of the special mission do not mention extensively the human rights situation in the country. They refer to the fact that Afghanistan is "now one of the world's largest producers of opium as well as other narcotic drugs. ... It is obvious that the lack of central authority and the instability in the country have contributed to an increase in production and trafficking of illicit drugs." The report makes a rather optimistic observation that "the widespread notion of Afghanistan as a sovereign and independent State still remains a powerful force". The special mission to Afghanistan began the third phase of its work in September 1994. It invited some 40 Afghan personalities from inside and outside Afghanistan to a meeting in Quetta, Pakistan, to advise it on effective ways to achieve a cease-fire. The group prepared specific proposals on a cease-fire, on a transitional government and on a security force for Kabul. On the basis of these proposals, the mission started a series of discussions with party leaders and other major figures whose cooperation would be important for a peaceful political process.

28. The Secretary-General visited Islamabad from 6 to 8 September 1994 where he met with members of the special mission, the heads of United Nations agencies for Pakistan and Afghanistan and a number of neutral Afghan leaders and other Afghan personalities, with representatives of Mr. Rabbani and with representatives of the Supreme Coordination Council of which Mr. Hekmatyar is a member. In a statement issued on 7 September, the Secretary-General expressed grave concern at the continuing hostilities and carnage in Afghanistan and

regretted that the efforts to convene a joint meeting of the warring factions and leaders of the neutral parties was not successful, hoping that they would not lead to a further intensification of the fighting. He strongly urged all the Afghan leaders to cooperate with the United Nations in the search for a lasting cease-fire and a fully representative political process in their country and urgently appealed for a moratorium in the shelling and rocketing of civilian areas in and around Kabul and in other parts of the country. The Secretary-General assured the people of Afghanistan that, despite these difficulties, the United Nations will continue to address the humanitarian dimension of the tragedy.

IV. SITUATION OF HUMAN RIGHTS IN AFGHANISTAN

A. Outline of the governmental structure and the consequences for the human rights situation

29. During his visit to the different provinces in Afghanistan, the Special Rapporteur studied to the extent possible the structure of the government and the administration of justice in order to gain insight into the situation concerning the enjoyment of the most fundamental human rights in the country, such as the right to personal liberty and security, the right to life, the right to a fair trial, as well as the enjoyment of economic, social and cultural rights.

30. The situation of human rights in Afghanistan should be considered in the light of the Universal Declaration of Human Rights, the common standard in international law, and on the basis of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to which Afghanistan is a party. After the Islamic revolution, the new authorities declared their willingness to respect the country's international obligations. Therefore, the Special Rapporteur availed himself of every opportunity to ask those involved in the administration of justice to what extent judges, attorneys and prison authorities feel bound by these texts. The answer was unanimous, in particular when the questions became detailed, that the holy Koran is the text which contains the necessary provisions concerning human rights, and therefore the Afghan judicial authorities are required to follow the Koran. For example, when the Special Rapporteur asked in Mazar-i-Sharif whether, in the case of the implementation of the death penalty which is admitted in article 6 of the International Covenant on Civil and Political Rights, there was a hangman who is qualified to carry out the penalty, the answer was that anyone is capable of doing it. The Special Rapporteur asked this question in the light of reports concerning executions by hanging which were carried out in Kabul in 1992 when the persons who had been sentenced to the death penalty took almost an hour to die and were finally shot dead.

31. The Koran is the principal source of law in the country. However, the judicial system and penal authorities are not unified in Afghanistan. It was the objective of the Special Rapporteur to acquaint himself with the status of the judicial system and find out whether different provinces or regions had any connection with the authorities in Kabul. The answer was affirmative only when the members of these authorities belonged to the same political groupings as

those holding power in Kabul. If this were not the case, there were no links with the capital. There is no central authority governing the judicial system. The same principle was valid as regards the security system. The regional authorities had no instances for appeal. The competences were limited to the regional level and judges were appointed by the regional authorities. For example, with regard to capital punishment, the pardon is not given by the central authorities but by the governor of a given province. Mention was made that in the event of difficulties regarding the interpretation of certain legal issues, advice was sometimes sought from the central judicial authorities in Kabul. Given the current situation prevailing in that city, this represents a considerable hardship for people who seek justice and forces them to await a final decision, if any, while their cases are in suspension.

32. With regard to foreign policy as well, some provincial authorities handled the external affairs of a given region. A number of provinces have a separate diplomatic service representing the interests of a specific region. This accounts for the impression of a highly decentralized system for which there is no legal foundation.

33. The Special Rapporteur mentions these examples in order to show that although the notion may be dear to people who love their country, Afghanistan does not have an effective central government. In a critical approach to the matter, a jurist may ask whether the State of Afghanistan still exists or if the country is in the process of being dismembered. This dismembering is such that the real administrative units are not the more or less clearly delineated provinces but regions which at times group several provinces and which are either governed by strong leaders or by councils (shuras) composed of some of the coalition parties which exist in a fragmented manner in Kabul. One may consider as a factual reality that there is no Afghan government in Kabul, although there is a State President. Rather, there are regional governments which exercise their power through regional armies within the territory which is called Afghanistan.

34. If one considers an army as a particular symbol of the sovereignty of a State, there is no State army in Afghanistan in spite of the fact that armed people in some regions are wearing military uniforms with different insignia. At first glance, they resemble the former army and the former sarandoi (policemen), but closer inspection reveals that there is no army under a central command but that there are armies belonging to different provinces and regions or, as in Kabul, armies of different political parties or factions.

35. This fact has important consequences for the enjoyment of human rights in Afghanistan. The decentralization of the country is so complete that the unity of State power has practically disappeared. Therefore, during his visit to the country, the Special Rapporteur started to examine more carefully the situation in the different regions of Afghanistan along a common scheme which was principally oriented towards the provisions contained in the international human rights instruments to which Afghanistan is a party.

36. As stated in the Introduction, the Special Rapporteur studied the situation of human rights in the northern part of the country which is governed by Mr. Abdul Rashid Dostom, in the western part of the country which is governed by

Mr. Ismail Khan, in the south-eastern part of the country which is governed by Mr. Gul Agha, mullah Naqib and Commander Amir Lalai, and the eastern part of the country which is governed from Jalalabad by Mr. Abdul Qadir. Some of these regions have shuras (councils) composed of representatives of the political parties existing in Kabul.

37. During his visit to the area in September 1994, the Special Rapporteur was unable to visit Kabul and the surrounding region owing to the impossibility to travel caused by a lack of security. Nevertheless, while overflying the city at night, the Special Rapporteur and his team were able to observe the rocketing and artillery battle which was confirmed to the pilots by the personnel at the Kabul airport control tower. The Special Rapporteur last visited the city in September 1993, when he met several leaders of political parties, including President Rabbani, Commander Ahmad Shah Massoud and the First Deputy Prime Minister affiliated with the Hezbe Islami (Hekmatyar) political party.

B. Situation of human rights in Kabul

38. In addition to his own impressions, the Special Rapporteur has obtained information about the situation in Kabul during meetings with prominent personalities as well as with numerous persons who have fled the city and are now either refugees or internally displaced. In addition, information about the situation in Kabul has appeared in the local and international press.

39. Kabul, the capital of Afghanistan and the symbol of the country's unity, did not suffer extensive damage during the Soviet occupation. The armed power struggle began among the victorious political groups after the smooth handover of power in April 1992 by the Najibullah Government to the representatives of the coalition of political parties who had mainly been stationed in Pakistan. The Peshawar Accord reached between the cited parties contained a division and distribution of power. The power struggle has had several phases which have been interrupted by attempts at reconciliation. So far, it has not come to an end. The power struggle is not waged in a democratic way but through the use of all types of weapons such as heavy artillery, rockets, and light and heavy infantry weapons.

40. Time and again, Kabul has been the goal of heavy armed attacks, each resulting in new victims. Over the months, in particular since 1 January 1994, Kabul has been the only city in Afghanistan where there has been almost continuous daily fighting between armed groups of the so-called governmental forces allied with President Rabbani and the forces allied with the former Prime Minister Mr. Gulbuddin Hekmatyar. Lulls in fighting have been very rare and military activity seems to be the one regular feature of the capital. The exceptions are brief truce periods on the occasion of visits by United Nations officials and foreign dignitaries.

41. The conflict in Afghanistan has mainly taken place in Kabul. From August 1992 to the present, the city has been almost completely destroyed, as was the case with most cultural monuments. The area of the university has been devastated and the Kabul Museum located near the Darulaman Palace has sustained heavy damage. Many artifacts of the Afghan cultural heritage which were on

display at the Museum have disappeared. Several thousand people have been killed and tens of thousands have been wounded. Hundreds of thousands of persons have been displaced within the city, have left it for other parts of the country or have become refugees. Kabul is now an isolated place which, although virtually destroyed, continues to be the target of artillery shelling and rocket attacks. The administration of the city is heavily curtailed. For example, although the mayor of Austria's capital, Vienna, had offered to help Kabul, his delegation could not enter the city. During the devastation of the city, systematic looting has deprived civilians and public institutions of their property. Women have been hunted down and have lost their honour in a shameful manner.

42. The former Pol-i-Charkhi Central Prison reportedly continues to be empty. There are also private prisons to which the Special Rapporteur and the International Committee of the Red Cross (ICRC) have not had access. The Special Rapporteur received information from reliable sources concerning the location of a number of such prisons in the area of Kabul and some provinces. Some members of the former KHAD (secret police) personnel are reportedly now in the service of certain political parties and armed groups.

43. The fighting in Kabul picked up with intensity at the end of June 1994. In July, ICRC reported that more than 4,000 persons have been killed and 21,000 wounded in the city since 1 January 1994. On 16 August 1994, ICRC issued a press release in which it indicated that bombing raids and artillery exchanges had increased in frequency and intensity and that even hospitals had come under indiscriminate fire. According to its estimates, some 100 people had been killed and 900 wounded in Kabul during a 10-day period. In a press release issued on 29 September, ICRC indicated that Karte Seh, one of the city's main hospitals, had been hit by a rocket on 22 September, when two children were killed and 10 people were wounded, among them six children. The same press release stated that 17,000 persons, mostly civilians, had been wounded in Kabul since the beginning of September. During the conflict at the end of September opposing two Afghan Shiah Muslim factions, 1,000 persons are believed to have been killed in only five days. The continuous fighting, shelling and rocketing has forced a considerable part of the population of Kabul to flee the capital.

44. For his previous reports to the General Assembly, the Special Rapporteur was unable to find information about the Kabul Museum based on eyewitness reports. During his visit to the area in September 1994, he had the opportunity to see photographs testifying to the destruction of the museum and to speak with a person who knows the museum well and has visited it recently. The museum's ethnographic room is reportedly empty and a few pieces are said to have been transferred downstairs, to the Islamic room. Numerous bronzes displayed in the Islamic room reportedly appeared to have been in the direct fire and are consequently melted and mangled, while others are blackened. The whereabouts of a number of figurines, flints and sculptured limestone (Aq Kupruk) are not yet known. The Begram glass is reported to mostly be in fragments and there are no bronzes or ceramics. As regards the famous Begrami ivories, mostly fragments were left as well as some wooden backings to which the ivory plaques were fixed. Most backings are empty while some have part of the plaques with the central figures removed. The coin cases are completely empty and an estimated 35,000 coins are believed to be lost. This suggests sophistication on the part

of the looters, who knew what they were after and had time enough to select and remove what they wanted. It has been reported that the Begram ivories were offered for sale for 200,000 pounds sterling. Additional proof that things have been taken very selectively is that catalogues and publications containing illustrations of the most precious artifacts are missing and the records and negatives of all the artifacts have been burned. It is believed that the museum was looted before being hit by artillery fire which took off its roof and destroyed the first floor. The Special Rapporteur received a written report which shows the extent of the devastation of the Kabul Museum and of the cultural heritage of Afghanistan during the war. In addition, it has been reported that the national archives were looted on 12 May 1994.

C. Human rights situation in the northern part of the country

45. The power of General Dostom, the Governor and military commander of the northern region of Afghanistan whose capital is Mazar-i-Sharif, extends over several provinces. As head of the Islamic National Movement of Afghanistan, he is advised by a council (shura) composed of representatives of the principal Afghan political parties which are also represented in Kabul. However, it appears that the region has no links, neither administrative nor judicial, with the capital. The Council headed by General Dostom tries to keep law and order and steer the region away from armed conflicts.

46. The Kabul Government has no say in matters concerning the northern part of Afghanistan. It has no right to appoint anyone in either the judiciary or the administration. The Council of the Islamic National Movement of Afghanistan is the only body which has the right to appoint officials.

47. The judicial system appears to be well organized. However, there are no contacts with Kabul. The judges appear mainly to apply Islamic law. Legislation dating back to the time of President Najibullah which is not incompatible with Islamic law and whose texts are thought to be in conformity with the Koran is also applied. The judges are not appointed by the authorities in Kabul but by General Dostom.

48. The Special Rapporteur visited the prison in Mazar-i-Sharif. The prison corresponds to the local prison standards and the conditions of detention appear to be satisfactory. Nevertheless, the prison clinic did not have such basic equipment as a stethoscope or the apparatus for taking blood pressure. It also lacked virtually all medicines, in particular antibiotics and analgesics. The Special Rapporteur was informed clearly that 48 "prisoners of war" were detained in a separate wing of the prison. This was the first time that authorities in any part of Afghanistan had openly recognized the existence of this type of prisoners. The Special Rapporteur visited the wing where they are detained and was able to speak with them quite freely. The prisoners, who were mostly young men, had reportedly been taken during the recent fighting between rival groups in and around Mazar-i-Sharif. Allegations were also made that they had been rounded up after the fighting because it was known that they belonged to the enemy forces. It became obvious that these persons were being held as hostages in order to be exchanged. It was indicated that some of them would be not only exchanged against other persons but also against money and goods.

49. The procedural law applied in the area still dates back to the time of President Najibullah, and the law against terrorism enacted while he was in office is also applied. The death penalty has been applied several times. The form of execution is by hanging. The right to pardon is exercised solely by General Dostom. The police has the right to keep persons in its custody up to 24 hours. Torture and ill-treatment are forbidden. The office of the Attorney supervises the behaviour of the police.

50. As concerns the treatment of juvenile delinquents, there are three age groups: children below nine years of age are not prosecuted, those aged from 9 to 15 can be prosecuted, while persons over 15 years of age are considered as adults. Whipping as a form of punishment is reported to be forbidden in the province. As concerns the stoning of women, the Special Rapporteur was informed that this penalty would be applied should a case for which Islamic law prescribes such punishment arise. This has not happened so far. The Special Rapporteur was informed that the amnesty decree issued after the breakdown of the Najibullah regime has been fully respected.

51. The laws concerning ownership of land dating from the time of the Communist government are not in force. The Special Rapporteur was informed that a decree had been issued when the Islamic Government came to power whereby all confiscated property was restored to its legal owners.

52. The judicial system in the area has three levels: a trial court, an appeal court and a supreme court. The Special Rapporteur was informed that there were no political courts and no political trials. The attorneys are elected and independent. The attorneys assured the Special Rapporteur that they were "really independent". Military courts have jurisdiction over soldiers, policemen and the personnel of the National Islamic Security Directorate.

53. The area of Mazar-i-Sharif is not free from insecurity, however. On 3 January 1994, the Pakistani daily The Frontier Post reported about the fighting in the Shebergan and Faryab regions of the north of Afghanistan between the forces of General Dostom and those allied with President Rabbani. A representative of the President indicated that some 200 persons had been killed and some 300 taken prisoner during the fighting. In addition, the Special Rapporteur was informed that numerous kidnappings and abductions had recently taken place in the area.

D. Human rights situation in the western part of the country

54. In Herat, the Special Rapporteur was once again able to meet with the Governor, Mr. Ismail Khan. In spite of fighting resulting in loss of life in Herat between the forces of the Governor and those belonging to General Dostom's air force which broke out at the end of June and the beginning of July 1994, Herat gives the impression of being a peaceful city where construction and other economic activity is taking place. The Special Rapporteur was once again impressed to see a population which is not armed. Although security is not guaranteed in some of the surrounding areas, the security in Herat would appear to be satisfactory and only members of the armed forces carry weapons. The Special Rapporteur was nevertheless informed about the conscription of men aged

19 to 39, with no exemptions, which partly accounted for an alleged desertion rate of 30 per cent.

55. While in Herat, the Special Rapporteur was able to visit the local prison and discuss the judicial system, which appears to be quite independent from Kabul. The Koran is the principal source of law. Laws which were applied during previous governments have been retained only in so far as they are in conformity with Islamic law.

56. As regards jurisdiction, only two instances are reported to be functioning while the third, the High Court in Kabul, is not. There are no specific laws against terrorism in Herat and the Special Rapporteur was informed that the former law against terrorism was not needed.

57. Mr. Ismail Khan informed the Special Rapporteur about the preparations for and deliberations of the Supreme Islamic Council which was held in Herat from 20 to 25 July 1994. He explained that owing to the circumstances prevailing in the country, time was needed to achieve peace. He stated that the Herat Council reflected the will of all the strata of the Afghan population and of all parties which were represented by more than 1,000 participants. The persons had gathered to reach an agreement about peace, but under a certain number of conditions. The question of freedom and security is reported to have taken precedence over personal interests. Mr. Ismail Khan informed the Special Rapporteur that it had been agreed that general elections should be held and that a Grand National Assembly (Loya Jirga) should be convened. He indicated that the reconstruction of the country would follow in a speedy manner. A body should be entrusted with transitional power while the Loya Jirga was being convened. Mr. Ismail Khan underlined the fact that the gathering was held in Afghanistan and that it represented the first opportunity to show the Afghan people that their destiny is not exclusively in the hands of political parties. As Kabul is the heart of the country, it was decided that it should be the venue of the establishment of the commissions envisaged to work on the convening of a Loya Jirga.

58. With regard to the cultural monuments of Herat, the Special Rapporteur received a report based on a visit to the city which was carried out in September 1994 and which left both positive and negative impressions. A number of cultural monuments in Herat have reportedly sustained little damage. Nevertheless, the Musalla complex was described as the saddest example of the most recent assaults on Herat's historical monuments. The Park-i-Bihzad, which used to be a beautiful park in the 1960s, is now reported to be an open, dusty desert. The once verdant Takht-i-Safar garden is now a barren hill. A number of mosaics have been described as being irretrievable and irreparable. The minarets at the Gawhar Shad mausoleum and in the Sultan Hussain Baiqara complex were directly hit by rockets but are still standing.

59. The Special Rapporteur was able to visit the Herat prison and speak with a number of detainees. Their conditions of detention appeared to be in conformity with those prevailing in detention centres in the rest of the country. The Special Rapporteur's attention was drawn to the lack of medical supplies, in particular medicines such as analgesics and antibiotics.

E. Human rights situation in the south-eastern part of the country

60. The Special Rapporteur was able to visit Kandahar, which is governed principally by two powerful commanders, maulavi Naqibullah Akhondazada who belongs to the Jamiat Islami political party headed by Mr. Rabbani and governs Kandahar City, and by Commander Amir Lalai who belongs to the National Islamic Front of Afghanistan (NIFA) party, as is the case with Mr. Gul Agha, the Governor, and who controls a large rural area. Maulavi Naqibullah Akhondazada informed the Special Rapporteur that he has certain contacts with Kabul. Kandahar City has been destroyed to a much greater extent than was the case when the Special Rapporteur last visited it in 1987. The Governor does not appear to exercise control over the entire province. The part of Kandahar which is under the authority of Commander Lalai has no factual relations with Kabul. Although the need for a central government was stressed, the local authorities were currently working on the elaboration of an administrative structure which would be comprised of two to four representatives of each district, depending on its size.

61. The Special Rapporteur was informed that the judiciary had no contacts with Kabul in view of the situation currently prevailing there but that the judges in Kandahar would be nominated by the authorities in Kabul. Islamic law was applied by religious judges. The Special Rapporteur was informed that there were no political prisoners. Maulavi Naqibullah informed the Special Rapporteur that there was a security police in the province and that security-related activities were also carried out by the army. A number of persons who used to be part of the former security police (KHAD) personnel but did not occupy high-ranking positions continued to hold office jobs. The Special Rapporteur was informed that death sentences were pronounced in certain cases and that the right to seek pardon was guaranteed. If a person was killed, the family had the right of pardon. Sporadic incidents involving extortion on highways had reportedly taken place.

F. Human rights situation in the eastern part of the country

62. The Special Rapporteur had a detailed discussion with the representatives of the judiciary whose competence extends to the Nangarhar, Kunar and Laghman provinces. The three stages of the judicial organization in the provinces were explained. Nangarhar Province has 23 districts and each has a court. Criminal, social and security matters are brought before the first instance. The president of the court is appointed by the president of the regional council (shura). The Special Rapporteur was informed that a list of judges had been sent for approval to Kabul but that no answer had been received.

63. Among the penalties concerning criminal offences, the death penalty is applied in accordance with Islamic law. The execution is carried out with a sword, not by hanging, and in public so as to serve as a deterrent. The Special Rapporteur was informed that the judicial authorities had registered 15 cases of homicide but that the death penalty was applied in only one case. The other sentences ranged from 15 to 20 years of imprisonment. Pardon is sought from the head of the judiciary and has to be confirmed by the President of the Council.

There are separate courts in Nangarhar Province concerning security matters, which are dealt with by the police. The police department undertakes the relevant investigations. There are four security courts in Jalalabad. The Special Rapporteur was informed that there were no prisoners of war or political prisoners in Nangarhar Province.

64. There is no central judiciary in Afghanistan. When questioned about the relevance of the International Covenants on Human Rights, the representatives of the judiciary informed the Special Rapporteur that Islamic law (Shariah) contained all the relevant provisions. Although he was informed about a case of whipping in public which took place in Jalalabad, as a result of which one person is reported to have died while the two others fell into a coma, the judicial authorities denied ever having heard of such a case. They indicated, nevertheless, that the Shariah allows for whipping, which is reportedly also carried out in public in order to serve as a deterrent.

65. The Special Rapporteur was able to visit the prison in Jalalabad where conditions of detention correspond to the average conditions prevailing in prisons in Afghanistan.

66. As concerns prisoners of war, the Special Rapporteur has seen a picture of such prisoners in a German newspaper which indicated that "President Rabbani's troops were guarding prisoners near the city of Kunduz who owe their allegiance to warlord Rashid Dostom". In addition, the Special Rapporteur has read an interview in the Pakistani magazine The Diplomat, in which it was indicated that a large number of Arabs were present in Afghanistan and fighting on the side of certain political parties. Many of them are reported to have been killed or taken as prisoners. The Special Rapporteur was unable to verify such information personally.

G. Specific human rights questions

67. The visit to several cities in Afghanistan undertaken by the Special Rapporteur in September 1994 brought him into contact with different organizations dealing with human rights and related issues. Specific problems, some of which had not been discussed much previously, were brought to the fore. There are a number of specific human rights problems in Afghanistan which shed light on the overall situation in the region. They can roughly be divided into general problems which have an incidence on the enjoyment of human rights and human rights violations regarding specific persons or groups.

68. One of the principal problems in Afghanistan is the insecurity which prevails in many parts of the country. An additional problem is the question of mines which affects the right to life and influences the willingness of refugees to return. In view of the number of mines which have been laid in Afghanistan, de-mining is a slow process, although de-mining operations have fulfilled and even surpassed their yearly targets.

69. As regards specific problems concerning individuals or groups of persons, there is in particular the problem of the status of women in Afghanistan, especially those living in refugee camps or camps for internally displaced

persons. There is also the issue of amnesty. Political amnesty was proclaimed at the very beginning of the Islamic Government by President Mojaddidi, in conformity with the will of other party leaders who had decided to proclaim a general amnesty. The Special Rapporteur has the impression that today, after a relatively peaceful transfer of power, persons who had served in one capacity or the other during the Najibullah Government as officers, civil servants or simple party members were now persecuted and killed by commandos belonging to the revolutionary parties. Some factual examples may help to illustrate the situation.

70. A particularly prominent case is the recent killing of an Afghan British Broadcasting Corporation journalist which has so far not been investigated in a satisfactory manner. The Special Rapporteur attempted to establish the facts and shed some light on this apparently mysterious killing, which finally turned out to be not so mysterious after all (see para. 76). One should also not overlook the fate of professors and other intellectuals who have fled Kabul because the university and much of the city has been completely destroyed. These persons, who constitute the intellectual wealth of the country, are lost in refugee camps or camps for displaced persons and are mostly unemployed. The Special Rapporteur will try to provide a rough picture about the human rights situation of this group of persons.

71. One of the most vulnerable groups of human beings in an armed conflict, and in particular in the type of non-international conflict such as the one which is currently taking place in Afghanistan, is women and children. Their interests are not actively represented at the different councils and gatherings such as the one which was recently held in Herat, where not a single woman was present. They are also victims of different types of brutality. It has also been stated that during the struggle for national liberation, no one recognized the merits of women who made a considerable contribution to it. In the devastated areas of Kabul, in camps for displaced persons or as refugees, women have often been reduced to begging in order to feed their families. The Special Rapporteur was asked specifically to look into the fate of widows who find themselves in a particularly vulnerable situation and who are believed to number 1.5 million after the war. There are also innumerable cases of women who were not only ill-treated but also raped.

72. The Special Rapporteur's attention has been drawn to the Ordinance on the Women's Veil, which is reported to have been issued by a nine-member professional committee of the High Court of the Islamic State of Afghanistan and which reads as follows:

"A denier of veil is an infidel and an unveiled woman is lewd".

"Conditions of wearing veil:

1. The veil must cover the whole body.

2. Women's clothes must not be thin.

3. Women's clothes must not be decorated and colourful.

4. Women's clothes must not be narrow and tight to prevent the seditious limbs from being noticed. The veil must not be thin.

5. Women must not perfume themselves. If a perfumed woman passes by a crowd of men, she is considered to be an adulteress.

6. Women's clothes must not resemble men's clothes.

"In addition,

1. They must not perfume themselves.

2. They must not wear adorning clothes.

3. They must not wear thin clothes.

4. They must not wear narrow and tight clothes.

5. They must cover their entire bodies.

6. Their clothes must not resemble men's clothes.

7. Muslim women's clothes must not resemble non-Muslim women's clothes.

8. Their foot ornaments must not produce sound.

9. They must not wear sound-producing garments.

10. They must not walk in the middle of streets.

11. They must not go out of their houses without their husband's permission.

12. They must not talk to strange men.

13. If it is necessary to talk, they must talk in a low voice and without laughter.

14. They must not look at strangers.

15. They must not mix with strangers."

73. After the almost complete destruction of Kabul University, of which the Special Rapporteur was an eyewitness, professors and other teaching staff have been left with no facilities to carry out their work. The material means such as books, journals or laboratories and the financial means required for normal university life have disappeared as a result of the destruction and looting of which the Special Rapporteur was also an eyewitness. Some university activities have been transferred from Kabul to the University of Jalalabad. It is estimated that some 200 professors have left the country recently, many of whom have sought refuge in Pakistan. Even the possibility to contribute to the

educational activities in Jalalabad is difficult for professors living in Pakistan. The Special Rapporteur was informed that although the same professors take the same minibus from Peshawar twice a week and cross the border at Torkham in order to teach in Jalalabad, they have to go through a lengthy bureaucratic procedure in order to obtain a written permission from the Pakistani authorities each time. Afghanistan is losing generations of academically trained young people as a result of the present situation.

74. The amnesty decree which was proclaimed in the first days of the Islamic government gave the impression that the way for a common understanding had been paved. However, the Special Rapporteur was informed that a number of persons who had held positions during the previous regime or persons belonging to rival groups have died in suspicious circumstances in the course of 1994. He was also informed that persons were afraid of receiving threats if they held political opinions which differed from those held by the parties or groups in power, especially since political parties have become armed organizations.

75. Persons have reportedly been killed in an arbitrary manner after being accused of being communists, as was the case with a number of former officers. The Special Rapporteur was provided with the following specific information. Professor Mahmad Mansour Hashemi, the former Minister for Water and Irrigation, was killed on the premises of Kabul University. Mr. Mahmad Dost, the former commander of the Kabul garrison, was abducted from his house and killed. His body was reportedly never recovered by his family. Mr. Sher Mahmad Shahar, the former Minister of Planning, is also reported to have been killed. Mr. Karim Shadan, the former Chief Justice, was abducted and executed. His body had been riddled with bullets. General Jamal Din Omar, a former senator, is reported to have been abducted in the Khair Kana neighbourhood of Kabul after a local mullah had attacked him during a sermon in a mosque. His body was reportedly found two days later. In January 1994, it was reported that some 20 to 30 former government officials had been arrested in Kabul and that the bodies of two, Colonel Farouk and Mr. Ghulam Mohammad Azem, were found in the Khair Kana neighbourhood on 26 January 1994. Mr. Nurul Jan Haqumi and 20 senior officers of the former Ministry for State Security were reportedly killed in April 1994. On the other hand, the Special Rapporteur was informed that former KHAD (secret police) personnel who did not occupy high-ranking positions continued to work with groups allied with the political parties who currently hold power. General Nurul Haq Ulumi, a member of the Central Committee of the former Watan political party, was reportedly stopped when leaving the garrison in his car and shot when he reached for his pocket in order to take out his identity card. The attorney of the special court, Mr. Ruhul Amin, was reportedly taken out of his home in Jalalabad at night and killed. In addition, some 50 to 70 people have reportedly been killed in the Bagram area while their leader was released against the payment of a ransom. Some 90 persons are alleged to have been apprehended during a clean-up operation in the area of Khost six months ago and have reportedly disappeared since then. Disappearances have also been reported in the area of Jalalabad and of Paghman, near Kabul. In the Microrayon area of Kabul, 18 former officers are alleged to have committed suicide. Serious doubts have been expressed about the exact circumstances in which they died. In January 1994, some 500 militiamen were reportedly taken from their homes in Helmand Province. In July 1994, some 50 civilians were reportedly killed in an act of revenge for the murder of a prominent commander.

In addition, two persons are reported to have been beheaded on the commander's grave. Cases of highway robbery and kidnapping have also been reported. In this context, mention was made that the reports of the Special Rapporteur lack references to war crimes.

76. The attention of the international community has been drawn in particular to the recent killing of the Afghan BBC journalist Mir Wais Jalil (aged 25). His badly mutilated body was found in an area near Kabul which is reportedly controlled by the Hezbe Islami (Hekmatyar) forces. Mr. Jalil was apparently abducted the day before, shortly after having interviewed the head of Hezbe Islami, Mr. Hekmatyar. The Special Rapporteur attempted to shed some light on the killing of Mr. Jalil. He spoke about it with a representative of the Hezbe Islami (Hekmatyar) party as well as with a number of persons who were particularly close to the victim. The news of Mr. Jalil's death received extensive coverage. The accounts of the circumstances of and responsibility for his death differed in function of the party to which the source of information belonged. Persons affiliated with Mr. Rabbani's party attributed the killing to the forces of Mr. Hekmatyar and vice versa. The representative of the Hezbe Islami party to whom the Special Rapporteur spoke indicated that Mr. Hekmatyar had established a commission of inquiry mandated to investigate the killing of Mr. Jalil. A similar commission was reportedly to be established by Mr. Rabbani. Additional corroborated information about the killing of Mr. Mir Wais Jalil exists. Nevertheless, the Special Rapporteur is not prepared to divulge any additional information in the present report. This case can also be viewed as a human rights problem in the light of General Assembly resolution 2854 (XXVI) of 20 December 1971 concerning the protection of journalists engaged in dangerous missions in areas of armed conflict.

H. Situation of the Afghan Sikh community

77. The Special Rapporteur has reported about the situation of the Sikh and Hindu communities of Afghanistan in his previous report to the General Assembly (A/48/584) after meeting with their representatives in Kabul in September 1993. The principal conclusion which he could draw at the time was that the members of these communities were not ill-treated or discriminated against during the days of the political transition and the battles between rival groups solely on the basis of their ethnic origin. During his visit to Jalalabad in September 1994, the Special Rapporteur met with members of the Sikh community in that city and visited a Sikh temple. He was informed that members of the Sikh community had for the greater part left all provinces of Afghanistan and had gone either to Jalalabad or to India. There were no particular difficulties in crossing the Pakistani border. The Sikhs who had gone to India reportedly had difficulties in finding jobs and occasionally returned temporarily to Afghanistan for work. Additional hardships result from the fact that families are separated. No allegations were made concerning the abuse of women belonging to this community. The only complaint voiced by the members of the Sikh community in Jalalabad was that it took them up to 12 or 16 days in Pakistan to obtain a visa for India and that they sometimes had difficulties in going to Pakistan for treatment of illnesses which could not be cured in Afghanistan.

V. SITUATION OF REFUGEES AND DISPLACED PERSONS

78. Ever since he was appointed to study the situation of human rights in Afghanistan, the Special Rapporteur has expressed the opinion that the situation of refugees constituted per se a complex human rights problem. Neighbouring countries such as Pakistan and the Islamic Republic of Iran accepted millions of refugees who started to flee the country at the beginning of the war in Afghanistan. The Governments of these countries deserve to be commended for the assistance they provided to Afghan refugees. Humanitarian assistance has been provided by international agencies and non-governmental organizations and has been amply documented.

79. The policy concerning Afghan refugees of the Governments concerned and of the competent international organizations began to change after the establishment of the Islamic government in Afghanistan. Although more than a million refugees have returned since the change of government, some 3 million Afghan refugees continue to live in Pakistan and the Islamic Republic of Iran.

80. The rate of repatriation which took place in 1992 and at the beginning of 1993 did not continue. It was less the fear of mines than political instability, the renewed fighting, the lack of security and the absence of an economic infrastructure which kept the remaining refugees from returning to their homes. The year 1994 has been described as a bad one for repatriation. By mid-September 1994, a total of 126,000 refugees had returned from both Pakistan and the Islamic Republic of Iran. The host countries began to change their policy towards Afghan refugees.

81. Although the conditions of the encashment programme remained the same, Governments started implementing policies aimed at encouraging the refugees to return. A number of refugee camps in Pakistan were closed. The assistance provided to refugees is geared towards creating conditions in Afghanistan that would incite refugees to return. It is estimated that more than 1 million Afghan refugees still reside in Pakistan. It is estimated that some 1.8 million Afghan refugees live in the Islamic Republic of Iran. The fighting which broke out with new intensity in Afghanistan on 1 January 1994 prompted the Pakistani authorities to close the border with Afghanistan on 12 January 1994, with the exception of persons with valid visas and travel documents and humanitarian cases.

82. The assistance provided by UNHCR is increasingly concentrating on the most vulnerable groups, such as women, children and the sick. The policy of UNHCR is also geared towards rendering Afghan refugees increasingly self-reliant. The Pakistani authorities are taking into consideration to a greater extent the demographic effects of the presence of a large Afghan refugee population in the country and a certain change in attitude towards them on the part of the local population. It has been reported that the refugee population is drifting towards the urban areas. In addition, the new wave of refugees which had arrived in Pakistan after the change of government in Afghanistan could not be housed in the same areas as long-standing ones since some of them were civil servants with the former government. This new situation places a certain amount of pressure on international organizations to solve the refugee problem by

stabilizing the situation in Afghanistan itself which would provide an incentive for refugees to return.

83. The Special Rapporteur has witnessed the plight of the some 184,000 internally displaced people who, having fled the continuous rocketing and shelling in Kabul, are now living in the Sar Shahi camp located in a barren area some 20 kilometres from Jalalabad, in Nangarhar Province, where facilities are provided by UNOCHA, UNHCR and non-governmental humanitarian organizations. Despite the provision of some basic services including health care and schooling, there are hygiene problems in the camp, caused by a poor water and electricity supply. Recently, new arrivals have had to survive without shelter or any other type of assistance. Numerous cases of diarrhoea, malaria and malnutrition have been registered.

84. The Special Rapporteur has received information concerning the plight of Afghan refugees in the Islamic Republic of Iran, and particularly those in the province of Khorasan. It would appear that a number of Afghans in this region had their work permits and identity cards confiscated by the police and were then taken to the frontier from where, often after being deprived of their money and property, they made their way to camps for returnees in Herat. Frequently, men have been obliged to return, leaving their families in the Islamic Republic of Iran. The situation for refugees in Khorasan may be worse than elsewhere in the Islamic Republic of Iran, and it should be noted that that country has in the past been hospitable to Afghan refugees.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

85. As Afghanistan has no effective central government, the imputation of State responsibility in international law is problematic. Although it still exists as a single territorial entity on the map, the country is divided into four distinct regions, north, west, south-east and east-centre, each of which is governed by a powerful personality belonging to or allied with political parties formed during the war against the occupying forces and the previous regime, or who has been an important military field commander. Though such personalities often bear titles such as "President", "Minister" or "Governor", they do not hold any nationwide responsibility.

86. The capital city, Kabul, has experienced virtually daily shelling and rocket fire since January 1994 and is now almost completely destroyed. Other cities and areas have been spared such intense attack but are subject to sporadic fighting and unrest.

87. Many residents of Kabul, especially women and children, are on the brink of death by starvation. The best efforts of humanitarian organizations to render assistance are frustrated by the ongoing war and the virtual blockade imposed by the forces opposed to those controlling the centre of the city. Aid deliveries, including those provided by the United Nations, are often stolen by armed gangs and, as of the end of September 1994, all four principal routes into Kabul were

blocked. The question is raised as to whether international aid deliveries can be effected without armed escort.

88. The lack of central authority in Afghanistan renders it impossible to ensure universal acknowledgement and implementation of the international human rights standards which bind the country. Only the Koran exists as a country-wide standard for the guaranteeing of fundamental rights.

89. The death sentence exists and is applied in Afghanistan. However, there are no figures to indicate the extent to which it is applied and executed.

90. Political parties and various armed groups throughout the country, acting independently, have established prisons and detention centres, access to most of which has been denied for the International Committee of the Red Cross and the Special Rapporteur. The Special Rapporteur is, however, aware of the location of a number of these centres. Given that most of the prisoners have been captured in the course of military conflict, the captors should respect the provisions of the Hague Convention and the First Additional Protocol thereto. In particular, prisoners such as those observed by the Special Rapporteur at Mazar-i-Sharif should never be considered as hostages.

91. Several thousand civilians have been killed and many more injured since January 1994 in fierce military conflict. Also, property and privacy rights have been violated. With the lack of military discipline, there is a failure to observe even the most basic elements of humanitarian law as applied to civilians.

92. The various parties and other factions in Afghanistan operate private security forces, often having as their members former KHAD (secret police) personnel.

93. The fighting and looting in Kabul is resulting in the loss of important parts of the country's cultural heritage, including mosques, museums and the University buildings.

94. In the absence of political reconciliation, the people of Afghanistan can have no hope of exercising the right of self-determination. Accordingly, it is regrettable that the various shuras (councils) and gatherings held since 1993 have been compromised by not being structured in the traditional manner. Not being representative of all the people, their decisions have not been respected and their follow-up structures have collapsed. The most recent initiative, following the meeting at Herat in July 1994, involves attempts to prepare a Loya Jirga (Grand National Assembly), to hold free and fair elections, to create a national army, to draft a constitution and to form a transitional government.

95. It is regrettable that drugs are still produced on a large scale and that the proceeds of sale are used for the acquisition of weapons and other military material.

96. Those most adversely affected by the fighting in Kabul are women, children, the elderly and sick. Numerous women from among the refugee and displaced population have reportedly resorted to prostitution and begging to feed their

families. Education has also been devastated. The University has been destroyed and most teachers and intellectuals have fled. University teachers who escaped to Pakistan encounter administrative difficulties in crossing the border to teach at Jalalabad.

97. The situation of refugees in 1994 is even worse than in 1993. There are more than 1 million Afghan refugees in Pakistan and some 1.8 million in the Islamic Republic of Iran. By mid-September 1994, only 126,000 refugees had returned to Afghanistan from both countries. It would now appear, however, that countries of asylum may be about to change their policies. Refugees reportedly risk being expelled from one province of Iran, and the Government of Pakistan appears to be considering its position also. As of 12 January 1994, Afghans need a visa for entry into Pakistan. On the other hand, international organizations aim to increase the self-reliance of Afghan refugees.

98. There is no unified judicial system in Afghanistan. The administration of justice varies from province to province, all of which apply Islamic law. The death penalty, amputation of limbs and flagellation as prescribed in the Koran are applied for relevant offences. Their application also varies from province to province.

99. The United Nations Children's Fund (UNICEF) recently issued alarming information that more than 4 million children have been killed in Afghanistan during the more than 14 years of war. More than 50,000 women are estimated to have died in childbirth over the same period. The international community should be alerted to intensify its humanitarian assistance to Afghanistan and enhance its efforts aimed at stopping the war.

B. Recommendations

100. The international community should continue to provide humanitarian assistance to Afghanistan and respond generously to the appeals issued by the Office of the Coordinator for Humanitarian Assistance. This should be particularly valid for those countries which supplied the country with weapons and war material.

101. The United Nations should assist in the implementation of the resolutions and decisions taken at gatherings of Afghans which are accepted by all segments of the Afghan population.

102. The Government of Afghanistan should receive technical assistance regarding the implementation of those instruments of human rights and humanitarian law which are in conformity with the Koran and should indicate which provisions enshrined in these instruments are difficult to apply.

103. Governments still supplying weapons to the different groups fighting in Afghanistan should be urged to halt all weapons deliveries. The United Nations should control the traffic of weapons in the region. Similar control should be exercised regarding drug trafficking.

104. The International Committee of the Red Cross and the Special Rapporteur should be given access to prisons run by parties and other armed groups.

105. The United Nations Educational, Scientific and Cultural Organization should be entrusted with carrying out a thorough investigation regarding the situation of the Kabul Museum and take the necessary measures to remedy it. The most urgent needs concern the establishing of an inventory and the hiring and training of conservationists who should be provided with the appropriate material and equipment to carry out their work.

106. The World Health Organization should be requested to provide, inter alia, assistance to the health facilities in prisons located in large Afghan cities, especially with regard to medicines such as antibiotics and analgesics and basic material such as stethoscopes and equipment for taking blood pressure.

107. The Special Rapporteur of the Commission on Human Rights appointed in pursuance of Commission resolution 1993/45, of 5 March 1993, entitled "Right to freedom of opinion and expression", should be invited to investigate the killing of BBC journalist Mir Wais Jalil. The Special Rapporteur is in possession of names of witnesses concerning the cited killing which he is prepared to place at the disposal of those conducting a fair and objective investigation into the matter.

108. As indicated during the World Conference on Human Rights held in Vienna in 1993, more adequate means should be provided to help internally displaced persons. Should the reports concerning the situation of Afghan refugees in Khorasan Province in the Islamic Republic of Iran prove to be correct, the authorities of that province are urged to adopt a more humane approach with regard to Afghan refugees.

109. The United Nations should intensify its efforts towards a peaceful political process in Afghanistan. It should assist in the establishment of a council/commission composed of party representatives and independent personalities to appoint a transitional government and convene a Loya Jirga. All segments of the Afghan population, both inside and outside Afghanistan, should be represented in these bodies. A cease-fire should come into force and a neutral Afghan security force should monitor the observance of the cease-fire and the demilitarization of Kabul. Political prisoners should be released before the convening of the Loya Jirga.

110. The present report should be translated into the Dari and Pashtu languages.

APPENDIX

Resolution adopted by the Supreme Islamic Council on 25 July 1994

Convened at Herat, Afghanistan on Asad, 1373 Solar Hijra (25 July 1994)

The Supreme Islamic Council of Afghanistan was convened at Herat from 20 to 25 July 1994, with the participation of Afghan personalities as follows:

From inside Afghanistan: 650 persons;

From Europe, the United States of America and Canada: 101 persons;

From other countries: 50 persons.

The Supreme Islamic Council adopted the following resolution on 25 July 1994:

Article 1: Whereas the right of self-determination in the framework of Islamic law (Shariah) belongs to the people, it has been decided to convene a Loya Jirgah (Grand National Assembly) on 23 October 1994 inside Afghanistan to ratify a constitution and to elect the political leadership of the country, as well as to resolve the country's destiny-making matters.

The Commission for the Convening of the Loya Jirgah is entrusted with the responsibility of ensuring the cooperation of all sides, the Organization of the Islamic Conference and the United Nations towards the realization of the above objectives.

Article 2: The leaders of the nine jihadi parties do not enjoy the exclusive authority to decide on the country's destiny-making matters. This authority is owned by the representatives of the nation.

Article 3: With regard to the communists, militias and bandits, the order of Islamic law is clearly stipulated and will be enacted accordingly.

Article 4: Any Government forged against the will of the nation or made under the supervision of outsiders is rejected and condemned.

Article 5: The Council strongly condemns foreign interferences in the internal affairs of the country. Whereas Afghanistan and those involved in interferences in its internal affairs are members of the United Nations, the Supreme Islamic Council urges the United Nations and the Organization of the Islamic Conference, on the basis of the provisions of the Charter of the United Nations, and of the constitutive agreement of the Organization of the Islamic Conference, to act diligently towards putting an end to foreign interferences in the internal affairs of Afghanistan.

Article 6: Afghanistan is a distinct and indivisible country. Any separatist attempt or instigation based on ethnic, linguistic, sectarian (religious) and regionalistic action is to be rejected and condemned.

Article 7: Securing a cease-fire and opening the roads and highways are rightful demands of the Islamic nation of Afghanistan and of the Supreme Islamic Council.

Article 8: An Islamic Army of 100,000 soldiers is to be formed for the purpose of establishing security and peace all over the country, opening roads and highways, crushing the plundering forces, defending the territorial integrity and repulsing any foreign aggression. The working out and the executive implementation of this decision has been assigned to the Military Commission.

Article 9: The Organization of the Islamic Conference, the United Nations and all countries friendly to Afghanistan are requested to contribute actively in a way that is free from imposing any condition in the reconstruction of our devastated country.

Article 10: The Council considered the ample discussions by the political and military commissions on the question of the transfer of power during preparation of the elections of the Loya Jirgah. The Council also considered the decision of the Shura-e Ahle-e Hall-o Aqd (December 1992) and the recent decision of the Supreme Council in the matter. The Council considered as well the declaration of the Head of State that he will not be a candidate for a term of office corresponding to the time of the preparation for the convening of the Loya Jirgah. The Council therefore decided that the Commission for the Convening of the Loya Jirgah (Komision-e Tadwir-e Loya Jirgah) will consult and seek the advice of all sides and parties involved in the matter and shall take the final decision in the matter.

Article 11: These decisions of the Supreme Islamic Council taken by the Governors, commanders, Ulema, cultural and political personalities of the country, express the demands and will of the entire Muslim and mujahid nation of Afghanistan. Any opposition to it would be an opposition to the will of the nation, and of the Supreme Islamic Council and would be against the national interest of the country.

We, the members of this Council,

Express our firm commitment to resist resolutely any opposition to this national accord.